

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 5964 of 2007**

With

SPECIAL CIVIL APPLICATION No. 7251 of 2007

With

SPECIAL CIVIL APPLICATION No. 26972 of 2007**For Approval and Signature:****HONOURABLE MR. JUSTICE H.K.RATHOD****Sd/-**

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ? **YES**

2 To be referred to the Reporter or not ? **YES**

3 Whether their Lordships wish to see the fair copy
of the judgment ? **YES**

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ? **NO**

5 Whether it is to be circulated to the civil judge
? **NO**

=====

GUJARAT WATER SUPPLY & SEWERAGE BOARD - Petitioner(s)
Versus

STATE OF GUJARAT & 1 - Respondent(s)

=====

Appearance :

MR DG CHAUHAN for Petitioner(s) : 1,
MS KIRAN PANDEY, AGP & MS BHAVIKA KOTECHA, AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 2.
MR NIKHIL D JOSHI for Respondent(s) : 2,

=====

CORAM : HONOURABLE MR. JUSTICE H.K.RATHOD**Date : 18/12/2007****ORAL JUDGMENT**

1. Heard learned advocate Mr. D.G. Chauhan
appearing on behalf of petitioner – Gujarat Water
Supply and Sewerage Board and learned AGP Ms. Kiran

Pandey appearing on behalf of respondent No.1 – State Authority and learned advocate Mr. Nikhil D. Joshi appearing on behalf of respondent No.2 – Agricultural and Rural Labour Association and learned advocate Mr. Harshad K. Patel appearing on behalf of respondent No.2.

2. In Special Civil Application No.5964 of 2007, petitioner has challenged the order of Reference referred by State Authority for adjudication on 8th April 2005 for regularisation of 414 daily wage labourers to the Labour Court, Nadiad being Reference (IDN) No.17 of 2005 by praying the writ of mandamus and writ of prohibition. The affidavit-in-reply is filed by respondent – Association is on record and considered by this Court.

3. In Special Civil Application No.7251 of 2007, the petitioner challenged the order of referring the industrial disputes of regularisation for 36 daily wage labourers to the Labour Court, Himatnagar being Reference No.(D)(LCH) 1 of 2005 by issuing a writ of mandamus and writ of prohibition.

4. In Special Civil Application No.26972 of 2007, the petitioner has challenged the order of referring the dispute to the Labour Court, Surendranagar for regularisation being Reference (LCD) No.6 of 2002 dated 6th April 2002 by issuing a writ of mandamus and writ of prohibition.

5. Learned advocate Mr. D.G. Chauhan has vehemently submitted before this Court that law is settled by larger Bench decision of Apex Court in case of *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. reported in (2006) 4 SCC 1* relying upon Para 2, 43 and 48. He submitted that if any appointment or engagement by statutory authority if it is made de-hors the statutory rules without inviting the application and without following the legal procedure, then, such appointment is contrary to Article 14 and 16 of the Constitution of India and such appointment is *ab initio void* and not recognised by Apex Court in number of decisions which has been relied upon by learned advocate Mr. D.G. Chauhan. He also submitted that Labour Court has no jurisdiction to grant regularisation and bypass the statutory rules which amounts to breach of Article 14 and 16 of the Constitution of India. He relied upon first decision of larger Bench as referred above and second decision which is reported in (2007) 1 SCC 408 – *Indian Drugs & Pharmaceuticals Ltd., v. Workmen, Indian Drugs & Pharmaceuticals Ltd., and relied upon Para 37, 43, 47 and 48. In this case, the benefit granted by Labour Court in favour of workmen to regularise their service has been confirmed by High Court, but, ultimately, Apex Court has set aside both the orders. Thereafter, he relied upon the Full Bench decision of this Court in case of Amreli Municipality v. Gujarat Pradesh Municipal Employees Union reported in (2004) 3 GLR 1841 and relevant Page 1877 and Para 12.1.15. He also relied upon the*

decisions of Apex Court in case of Surender Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parishad and Others reported in (2006) 7 SCC 684 – Para 37 and 38. He further relied upon the decision in case of National Fertilizers Ltd., and Others v. Somvir Singh reported in (2006) 5 SCC 493 – Para 13 and 18. He also relied upon the decision of Punjab Water Supply & Sewerage Board v. Ranjodh Singh and Others reported in (2007) 2 SCC 491 – Para 14, 15 and 20.

6. Learned advocate Mr. Chauhan submitted that Labour Court/Industrial Tribunal is not competent and have no jurisdiction to grant regularisation to such daily wagers those who were not appointed as per statutory rules.

7. In short, his submission is that Labour Court or Industrial Tribunal cannot regularise the services those who have been illegally appointed contrary to the statutory rules while committed breach of Article 14 and 16 of the Constitution of India. He read the relevant paragraphs of each decisions before this Court as referred above, but, in short, his submission is that industrial dispute which has been referred by respondent No.1 to the concerned Labour Court with a demand to regularise their services, these all employees were not appointed as per service rules after inviting the application on the basis of advertisement and all the appointments are contrary to Article 14 and 16 of the Constitution of India, therefore, concerned Labour Court has no jurisdiction

to grant any of the relief in favour of respondent workman. Therefore, order of reference is challenged before this Court. Except that, he has not made any further submission before this Court and no other decision is relied upon by learned advocate Mr. Chauhan.

8. Learned advocate Mr. Nikhil D. Joshi appearing on behalf of respondent No.2 - Association supported the decision of respondent No.1 on the ground that industrial dispute was raised by workman/union/association in respect to employment or better condition of service which falls within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 and respondent No.1 is having jurisdiction under Section 10(1) of the Industrial Disputes Act, 1947 that in case if the industrial dispute raised by workman/association/union is existed and apprehended, then, respondent No.1 can refer the dispute for adjudication to the Labour Court. Therefore, learned advocate Mr. Joshi submitted that respondent No.1 has jurisdiction and power to refer the industrial dispute raised by workman/association/union under the machinery of the Industrial Disputes Act, 1947, and for that, respondent No.1 has not committed any error in referring the dispute for adjudication to the Labour Court. He submitted that dispute referred for adjudication is in one case of the year 2002 and in another two cases, it is of the year 2005 which is challenged by petitioner after a period of about two years / 5 years. Learned advocate Mr. Joshi also raised contention that merely referring the dispute

by respondent No.1, no legal right of the petitioner is violated by respondent No.1. He also submitted that so long, legal right of the petitioner is not violated, writ petition is not maintainable under the provisions of Article 226 of the Constitution of India. He also submitted that writ of mandamus can be enforced at the stage, where, when legal injury caused to the party which violated that statutory right or fundamental right, at that occasion, he can approach to the High Court under Article 226 of the Constitution of India and in such circumstances, writ of prohibition can also be invoked by the party. But, in this case, he submitted that legal/ statutory right or fundamental right of the petitioner employer is not violated merely industrial dispute referred by respondent No.1 for adjudication. Therefore, he submitted that this petition cannot be entertained only on that ground.

9. He also raised contention that whatever the contentions raised by learned advocate Mr. Chauhan against the merits of the matter, learned advocate Mr. Joshi emphasizes it that for that, petitioner is having ample opportunity to raise these all contentions before the Labour Court and Labour Court is competent who is having the jurisdiction and power under Section 10(1) and Section 10(4) of the Industrial Disputes Act, 1947 to decide such preliminary point or contentions raised by petitioner on the basis of the record of the proceedings. Therefore, learned advocate Mr. Joshi submitted that

when petitioner is having ample opportunity to raise all these contentions before the Labour Court and Labour Court is competent to decide it and thereafter, if that order is adverse to the petitioner, petitioner can challenge to the higher forum under Article 226 of the Constitution of India, therefore, he submitted that at this stage, without raising such contentions before the Labour Court, this petition is pre-mature. He also submitted whatever contentions raised against regularisation should not have to be granted by the Labour Court considering the larger Bench decision of Apex Court. These are the disputed questions of facts between the parties. Whether daily wagers appointed by following due process of law or not is to be examined by the Labour Court. This being not an admitted position on which the daily wagers were appointed by the petitioner. Therefore, learned advocate Mr. Joshi submitted that the contentions raised by learned advocate Mr. Chauhan, this being a disputed questions of facts requires oral and documentary evidence from both the parties and only on affidavit, jurisdiction of this Court may not be entertained such disputed question of facts under Article 226 of the Constitution of India. Therefore, learned advocate Mr. Joshi submitted that petitioner can raise the preliminary point before the Labour Court to decide this issue being a preliminary point and then, to get the order which if it is adverse to the petitioner, the same can be challenged to the higher forum. So, he submitted that at this stage, the nature of

petition and prayer made in this petition cannot be entertained by this Court and petitions may be dismissed.

10. *Learned AGP Ms. Pandey supported the orders of referring the dispute to the Labour Court concerned. She submitted that respondent No.1 has jurisdiction when dispute is raised before him and found that dispute is in existence, then, it can be referred for adjudication to the Labour Court under Section 10(1) of the Industrial Disputes Act, 1947. She also submitted that petitioner has not challenged the jurisdiction part of respondent No.1 in the present petition that respondent No.1 has no jurisdiction, therefore, when respondent No.1 is having the jurisdiction to refer the dispute, then, petitioner is not entitled to challenge further merits of the dispute before this court without raising this contention before the concerned Labour Court. Therefore, she also submitted that present petitions may be dismissed.*

11. *I have considered the submissions made by learned advocate Mr. Chauhan and I have also considered the submissions made by learned advocate Mr. Joshi as well as learned AGP Ms. Pandey.*

12. *The order of reference which are under challenge i.e. one is of the year 2002 and rest of two are of the year 2005. So, there is an apparently delay in challenging the order of reference referred*

by respondent No.1. The submissions made by learned advocate Mr. Chauhan as if that Labour Court has granted the relief in favour of respondent workmen or this Court is going to grant the relief in favour of respondent association/union/workmen. The dispute referred for adjudication by respondent No.1 is at large open and Labour Court has to adjudicate it on the basis of the evidence which will be taken by both the parties and thereafter, that dispute can be adjudicated by the Labour Court. So long, order of reference challenged in present petitions, where, petitioner has not challenged the jurisdiction of respondent No.1 for referring the dispute, then, further question on merits cannot be entertained by this Court while considering the petition under Article 226 of the Constitution of India. The respondent No.1 is having the jurisdiction under the machinery of Industrial Disputes Act, 1947 in case when industrial dispute is existed or apprehended, then, under Section 10(1) referred such dispute for adjudication to the Labour Court. Therefore, the challenge as per prayer made in all these three petitions is apparently failed, because, respondent No.1 has not granted regularisation in favour of respondent union/workmen/association by referring the dispute to the Labour Court. The industrial dispute which referred as to whether workmen are entitled regularisation or not is yet to be adjudicate by the Labour Court, so, respondent No.1 has not granted any relief to the respondent workman, but, respondent No.1 has merely referring the dispute for

adjudication. Therefore, the law which has been referred and cited by learned advocate Mr. Chauhan that can be cited by learned advocate Mr. Chauhan before the Labour Court who has to adjudicate the issue and then to pass final award as to whether regularisation is to be granted or not to be granted. At this stage, this question does not arise to examine as to whether regularisation is to be granted or not to be granted. Therefore, law which has been referred by learned advocate Mr. Chauhan before this Court challenging the order of reference made by respondent No.1 is totally irrelevant, because, looking to the challenge, the law relied upon by learned advocate Mr. Chauhan is not helpful to him, but, same can be relied upon by petitioner before the Labour Court when dispute is adjudicate after considering the evidence on record.

13. Though larger Bench decision of Apex Court in case of Secretary, State of Karnataka v. Umadevi (3) & Others relied upon by learned advocate Mr. Chauhan, but, thereafter, recently, the Apex Court has considered the larger Bench decision rendered on 9th October 2007 in case of **U.P. State Electricity Board v. Pooran Chandra Pandey and others** reported in **2007(7) Supreme 374 = 2007 (12) Scale 304**. The Para 11 where the observations made by Apex Court in view of the submissions made by learned counsel for the appellant who has relied upon by larger Bench decision, the Apex Court has observed as under :

“Learned counsel for the appellant has relied upon the decision of this Court in Secretary, State of Karnataka & Ors. v. Uma Devi (3) & Ors (2006) 4 SCC 1 and has urged that no direction for regularisation can be given by the Court. In our opinion, the decision in Uma Devi's case (supra) is clearly distinguishable. The said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution.”

14. Further, the observations made by Apex Court in aforesaid decision in Para 16 which is as under :

“We are constrained to refer to the above decisions and principles contained therein because we find that often Uma Devi's case (supra) is being applied by Courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University (supra) and Bharat Petroleum Corporation Ltd. (supra), a little difference in the precedential value of a decision. Hence, in our opinion, Uma Devi's case (supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Uma Devi's case (supra) inapplicable to the facts of that case.”

15. Therefore, considering the aforesaid

observations made by Apex Court in subsequent decision, the little difference in facts will change the nature of dispute. Therefore, so long, the details are not on record that in which manner, the daily wagers were appointed on which terms and conditions, on what salary and on what benefits are available to them, in absence of that, the decision which has been relied upon by learned advocate Mr. Chauhan cannot be applied, unless, Labour Court can examine the merits and then, applied the law laid down by the Apex Court on the basis of the facts which come on record placed by both the parties.

16. Therefore, according to my opinion, the aforesaid decision of U.P. State Electricity Board (supra), the Para 12 to 15, where, the Apex Court has discussed that what is the meaning of ratio and how the decision is to be applied and whether every observations found in the decision cannot consider to be a ratio while considering the English Law which I am not quoted because relevant is only Para 11 and 16 at this stage. Further, Para 19 is also equally important which is quoted as under which gives the facts of the case :

“In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years' service and it will surely not be reasonable if their claim for regularisation is denied even after such a long period of service. Hence, apart

from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularisation and are made to face the same selection which fresh recruits have to face.”

17. *The aforesaid paragraph suggests number of things which can be considered by the Court at the time when a daily wager who remained continue in service about more than two decades, then, Court should not have to ask him to face the fresh selection and not to regularise the service itself is violated Article 14 of the Constitution of India and being an arbitrariness and unreasonableness on the part of the State Authority, therefore, law will apply to the facts of each case. The facts are not on record which requires to be placed on record before the Labour Court and then, Labour Court can examine the issue on the basis of the record.*

18. *Therefore, according to my opinion, the petitioner who is having the opportunity to raise all these contentions before the Labour Court including the preliminary and invite the order of Labour Court on the merits and if it is against it, same can be challenged by petitioner before higher forum.*

19. *This aspect has been, recently, examined by this Court in case of **Apollo Tyres Limited v.***

Commissioner of Labour and Other being Special Civil Application No.29946 of 2007 dated 12th December 2007. [See : 2006 II CLR 1051 – *Indian Potash Ltd. v. Gujarat Mazdoor Panchayat & Anr.*] The relevant Para 4 to 9 are quoted as under :

“4. I have considered the submissions made by the learned Advocate Mr. KC Raval before this Court. Considering the submission of learned advocate Mr. Raval that the order of reference is bad, learned advocate Mr. Raval has not been able to point out as to which right of the company is violated by respondent no.1 by making an order of reference. Unless and until it is successfully demonstrated by the party challenging an order of reference that it is violative of any right of the petitioner, such party cannot be permitted to challenge the order of reference only on the ground that the reference is bad. Even if it is believed that the order of reference is bad, then also, that would, ipso-facto, not entitle such party to challenge the same before the higher forum. So long as the right of the petitioner company not adversely affected by the respondent no.1 while passing the order of reference, this court cannot entertain the petition only on that ground. Writ petition is maintainable only when right of the parties are adversely affected by the action or order of the State Authority. Learned

Advocate Mr. Raval has not been able to point out before this court that because of the order of reference made by respondent no.1, any right of the petitioner has been adversely affected. Therefore, on this count, writ petition is not maintainable. Apart from that, whatever contentions raised by the petitioner in this petition before this court can be raised by the petitioner even before the industrial tribunal as well while participating in the reference proceedings and the petitioner can participate in the reference proceedings without prejudice to his rights and contentions to challenge the order of reference if the ultimate orders of the tribunal are adverse to the petitioner, then same can be challenged therefore, on that ground also, writ petition challenging order of reference is not maintainable. Therefore, according to my opinion, petitioner is having alternative effective remedy to raise all these contentions before the industrial tribunal and the tribunal is competent enough to adjudicate or decide it on the basis of the record which can be produced by the respective parties before the tribunal. So, the petitioner is having alternative equally efficacious remedy to raise all these contentions before the industrial tribunal and therefore also this petition is not maintainable because petitioner has not been able to point out that any right of the petitioner has been

adversely affected by order of reference.

5. Further, whether the union is representing substantial number of workmen or not; whether the individual dispute under section 2A is to be converted into a dispute under section 2K or not; in respect of the settlement, whether that settlement has been accepted by each workman or not and whether the union which has raised dispute is entitled to raise the dispute in respect of suspended employees or not and whether all these contentions raised by the petitioner in this petition for challenging order of reference were raised by the petitioner in conciliation proceedings or not, all these are the disputed questions of fact which cannot be appropriately dealt with and decided by this court in a petition under Article 226 of the Constitution of India. There is nothing on record to show that the petitioner has raised any of such contentions before the conciliation officer. All these are the disputed questions of fact requiring appreciation of evidence and the petitioner is having ample opportunity to raise preliminary contention before the industrial tribunal in respect of whatever contention raised before this court and the industrial tribunal can, on the basis of the evidence and record produced by the parties, examine the same but this court cannot examine all these disputed questions of fact in a petition under Article 226 of the Constitution of India.

6. In **Philips India Limited and Another And P.N. Thorat, Asstt. Commissioner of Labour and Conciliation Officer and others**, reported in **2006-I-LLJ page 1013**, order of reference was challenged by the employer before the Division Bench of Bombay High Court. Workmen were contending fraud committed by employer in implementing settlement for Voluntary Retirement Scheme. It was held that the dispute involved triable issues requiring evidence to be led and, therefore, employer's challenge was held to be not sustainable. Relevant observations made by the Division Bench of the Bombay High Court in the said decision in para 12 are reproduced as under:

"12. From the above, what emerges is that there are serious triable issues. The contention of the Union and the workmen is that fraud has been practised upon them. If the workmen are able to succeed in proving that the agreement was entered into by playing fraud, it will be open for them to avoid the settlement. This issue cannot be answered by this court at this stage as it would require evidence to be led. Prima facie a Division Bench of this Court in the very proceedings has taken note that the employees involved in both the writ petitions would be workmen. The Apex Court, however, left that question to be decided. At any rate the expression workmen considering section 2(s) of the ID Act would include ex-workmen. That contention of the management that they are not workmen would require adjudication of facts. Based on these findings and the issue of pensionary benefits under VRS it will have to be considered whether the dispute partakes of an industrial dispute. This again would be premature for this Court to decide at this stage and it will be open to the petitioners

to raise all issues before the Industrial Tribunal to which the reference is made. Similarly the contention of the employer that they have complied with the terms of the settlement and consequently there is no industrial dispute and that the employees cease to be workmen will have to be adjudicated upon by the Tribunal. "

7. Similar question has been examined by the Division Bench of Delhi High Court in DD Gears v. Secretary (Labour) and others, reported in 2006 Lab. IC 1462 wherein reference of an industrial dispute to the industrial tribunal was challenged. It was held that no writ petition should be entertained against a mere reference as not affecting rights of the parties. It was held in para 19, 20, 21 and 22 of the said judgment as under:

"19.The learned Single Judge rejected the Writ petition and hence this appeal.

20. In our opinion, we cannot interfere with the reference order under section 10 (1) of the Industrial Disputes Act because that order does not affect the rights of the parties. Hence the Writ petition against that order is liable to be dismissed.

21. It is well settled that a writ petition lies only when the rights of some party has been adversely affected. A mere reference under section 10(1) of the Industrial Disputes Act does not effect any one, rights

and hence no writ petition should ordinarily be entertained against a mere reference under section 10(1), as such a petition is premature.

22. It is only when an a ward is given by the Labour Court or Tribunal that a writ petition should be entertained."

8. In the instant case also, mere reference has been made by respondent no.1 and petitioner is unable to point out how it is adversely affecting the rights of the company. Petition is also involving disputed questions of fact which cannot be appropriately dealt with and decided in a writ petition under Article 226 of the Constitution of India. Therefore, in view of the aforesaid two decisions, petition is not sustainable in law.

9. In Sanjay Sitaram Khemka versus State of Maharashtra and others reported in (2006) 5 SCC 255, maintainability of petition involving questions of fact was considered by the apex court. It was held that the matter involving disputed questions of fact cannot be dealt with by the High Court in exercise of its power of judicial review. Relevant observations made in para 8 and 9 of the judgment by the apex court are reproduced as under:

"8. Having regard to the allegations and counter allegations made by the parties before us, we are of the opinion that no relief can be granted to the petitioner in

this petition. The writ petition has rightly been held by the High Court to be involving disputed questions of fact. The petitioner has several causes of action wherefor he is required to pursue specific remedies provided therefor in law.

9. A writ petition, as has rightly been pointed out by the High Court, for grant of said reliefs, was not the remedy. A matter involving a great deal of disputed questions of fact cannot be dealt with by the High Court in exercise of its power of judicial review. As the High Court or this Court cannot, in view of the nature of controversy, as also the disputed questions of fact, go into the merit of the matter; evidently no relief can be granted to the petitioner at this stage. We are, therefore, of the opinion that the impugned judgment of the High Court does not contain any factual or legal error warranting interference by this court in exercise of its jurisdiction under Article 136 of the Constitution."
[See : 2007 (6) MLH 406]"

20. Even Madras High Court has also considered the same question in case of **Management of Tractors and Farms Equipments Ltd., rep. by its General Manager, Kallapatti v. Presiding Officer, Labour Court, Trichy and Others** reported in (2007) 6 MLJ 406. The relevant Para 37, 38, 40, 41 and 42 are quoted as under :

"37. With regard to the contention that even assuming that the management has made a wrong prayer and that this Court can mould the relief, as this Court has taken a view that due to self-imposed restriction made on this Court, the Court should not interdict any process of adjudication even before it

can reach its finality. In fact, the Supreme Court had in more than one occasion has held that the Court should not entertain petitions at the threshold and decide preliminary issues.

38. The Supreme Court in *D.P. Maheswari v. Delhi Administration* AIR 1984 SC 153 : (1983) 4 SCC 293 : 1983-II-LLJ-425, it has been held as follows (at pp.426 and 427 of LLJ)

“It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution of India and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, some times for over a decade.

.....
There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of a High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those

who can well afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of the workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all Tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues."

40. Therefore, if any attempt is made to stall a properly laid claim before the Labour Court, it will not only result in unjust encroachment at the powers of the Labour Court which after the T.N. State Amendment of 1998 has given plenary powers to Labour Courts in dealing with the dispute of non-employment.

41. The prayer for issuance of a Writ either in the nature of mandamus and Prohibition

will not apply to an original jurisdiction. Unless a strong case is made out, the Court need not taken up the task of entertaining writ petitions on the basis of affidavit jurisdiction. In fact, the Labour Court are best suited to deal with them as the Labour Courts not only can receive documents in evidence but also can let in oral evidence and appreciate the factual matrix of the case involved. No prejudice will be caused to the mighty-management in facing the trial. Unnecessarily, the adjudication has been stalled for more than one year. Had the dispute been allowed to go for a logical end, the dispute itself would have been over by now. If the management has an excellent case, then it is for them to plead such of those defences which for them to plead such of those defences which are available to them both under law and on facts and bring the disputes to their finality.

42. Even in the Bharat Heavy Electricals Ltd., v. Anil and Others (supra), the Supreme Court decided the legal issues upon the validity of adjudication by a Labour Court and it is not an authority to forestall a dispute even before its conclusions."

21. This question has been decided at length by this Court (Coram : K.A. Puj, J.) in case of **Indian Institution of Management v. Gujarat Mazdoor Sabhga & Ors.** reported in **2006(2) GCD 1227**. In this case

also, order of reference was challenged by Management and ultimate conclusion after considering the number of decisions is in Para 26 which is quoted as under :

"26. After having heard the learned advocates for the parties and after having gone through the pleadings of the parties made before the Assistant Labour Commissioner and after having carefully considered the contentions raised in the present petition as well as the authorities cited before the Court, the Court is of the view that the impugned order passed by the Assistant Labour Commissioner, Ahmedabad does not call for any interference of this Court while exercising its extraordinary writ jurisdiction under Articles 226 and 227 of the Constitution of India. While making the reference, the Assistant Labour Commissioner has observed that the industrial dispute pertaining to the matters regarding 16 lady workers is required to be referred to the Labour Court while exercising his powers vested in him under Section 10(1)(c) of the Industrial Disputes Act and the dispute was as to whether these 16 ladies should be reinstated in service in their original posts with full back wages for the intervening period. During the course of conciliation proceedings, the petitioner has filed its reply and counter

reply was filed on behalf of the Union. The plain reading of the reply as well as counter reply makes it clear that the petitioner has raised the dispute as to whether these 16 ladies are the employees of the petitioner or whether the petitioner is an 'Industry'. The Union has filed its counter reply, wherein it is stated that these 16 ladies were the employees of the petitioner. The Assistant Labour Commissioner is not competent to decide as to whether these 16 ladies are the employees of the petitioner. It requires adjudication and proper forum for adjudication is either the Industrial Tribunal or Labour Court. The Assistant Labour Commissioner has to merely discharge his function as an administrative officer. He has to record prima facie subjective satisfaction and after having come to this subjective satisfaction, he has to refer the dispute to the Labour Court or to the Industrial Tribunal. Whether particular person is an employee of the institute or not, requires leading of evidence oral as well as documentary. This could be done only at the level of either the Labour Court or Industrial Tribunal where both the parties do get the opportunity of leading their evidence. It is held by the Courts on number of occasions, that the proceedings should not be terminated

prematurely. If the reference is rejected, the Conciliation Officer has to record the reasons for that under Section 12(5) of the Act. However, while making the reference, it is not necessary to record any reason. Merely because the reasons are not recorded while making the reference, it cannot be said that the order is without application of mind. It is also important to note here that before the Assistant Labour Commissioner, the award passed by the Industrial Tribunal in the case of NID was pointed out wherein on similar situation, the Industrial Tribunal has come to the conclusion that those 31 ladies were the employees of National Institute of Design. It was also pointed out that the petition was pending before this Court being Special Civil Application No. 8549 of 1988. The Court has also considered the relevant observations made by the Hon'ble Supreme Court in the decision of State of Madras Vs. C.P. Sarathy (supra) wherein, in no uncertain terms, the Supreme Court has observed that if the dispute was an industrial dispute as defined in the Act, its factual existence and expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the

reference bad and quash and set aside the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion. The Court has also considered the binding judgment of the Supreme Court and observations made therein which are squarely applicable to the facts of the present case. **The determination of the questions or issues which are raised in this petition requires examination of factual matters and for that purpose, all relevant materials including oral as well as documentary evidence will have to be led before the Labour Court and same are required to be considered. If this is the situation then in that case, the Government could not arrogate unto itself the power to adjudicate on the question and hold that 16 ladies were not the workmen within the meaning of Section 2(s) of the Act and terminate the proceedings prematurely. This issue will have to be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. Simply because the dispute is raised before this Court regarding employer-employee relationship or whether the petitioner is an 'industry' or not, the order making reference passed by**

the Assistant Labour Commissioner cannot be quashed and set aside."

22. In aforesaid decision delivered by this Court (Coram : K.A. Puj, J.), the same question was argued by Management raising the same kind of contention that reference is bad, but, this Court has considered this contention and come to conclusion that these are the questions which can be raised before the Labour Court and Industrial Tribunal and Labour Court/ Industrial Tribunal are competent to decide it, therefore, that petition is also dismissed by this Court.

23. The petitioner has not made any allegation or alleged malafide against respondent No.1. Learned advocate Mr. Joshi also pointed out the merits of the matter and earlier also, petitioner has challenged similar type of orders and this being a third round of litigation between the parties. The submissions made by learned advocate Mr. Joshi at this stage is not relevant to be examined, but, learned advocate Mr. Joshi can raise these all submissions before the Labour Court when this contention is raised by petitioner before the Labour Court.

24. The petitioner being a State Authority adopted dilatory tactics to see that the industrial dispute raised by the workman with a demand of regularisation may not be adjudicated by competent Labour Court/ Industrial Tribunal. The reference of

2002 and 2005 is challenged after a period of five years and two years without any justification or explaining the delay in challenging such order of reference. Such type of tactics adopted by the employer to drag the workers in a further and higher litigation. So, ultimately, the purpose and object of industrial adjudication may not be achieved and frustrated. Similarly, employer after order of reference raising number of preliminary contentions to avoid the adjudication on the main issue and on decision on preliminary point if it goes against employer then challenged to higher forum and stall the reference proceedings. In such tactics, workers becomes merely spectator because they do not have sufficient means to compete with legal fight of the employer. Such kind of practice should not have to be encouraged by higher forum. The decision, where, Apex Court has considered such type of practice adopted by the employer. In case of ***D.P. Maheshwari v. Delhi Administration & Others*** reported in ***1983 II LLJ 425***, in case of ***S.K. Verma v. Mahesh Chandra and Another*** reported in ***1983 II LLJ 429*** and in case of ***Workmen of M/s. Hindustan Lever Ltd., and others v. Management of M/s. Hindustan Lever Ltd.***, reported in ***1984 (Lab.I.C.) 276*** are relevant, where, such kind of practice has been deprecated by Apex Court. In this case also, by way of challenging the order of reference, in a different nature, same tactics has been adopted being a dilatory tactics to avoid adjudication on the main issue. Therefore, also, writ petition should not have to be entertained by this

Court, otherwise, encouragement is given to the employer to stall the proceedings of references.

25. Therefore, considering the aforesaid law on the subject as relied upon by learned advocate Mr. Chauhan which almost all the decisions may be helpful in merits of the matter, but, not helpful in the challenge of order of reference. This Court is not examining the merits of the matter. This Court is also examining the order of reference which is valid or not or petitioner when reference is validly made by the competent / appropriate Government, then, whatever the contentions on merits, employer shall have to go before the Labour Court and to raise it and Labour Court is competent to examine in accordance with law. Therefore, these petitions are not entertained by this Court as petitioner is having ample opportunity before the Labour Court as respondent No.1 is rightly having jurisdiction and legally referred the dispute before the Labour Court, for that, respondent has not committed any error while referring the dispute for adjudication to the Labour Court, which requires any interference while exercising the power under Article 227 of the Constitution of India.

26. Hence, there is no substance in these present petitions. Accordingly, present petitions are dismissed with no orders as to costs.

Sd/-

[H.K. RATHOD, J.]

#Dave